

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TYRAN PINKINS

v.

JURY TRIAL MINUTES

**JOSHUA DIEDRICH and TODD
LAUER**

Case No. 19-cv-368-bhl

HONORABLE BRETT H. LUDWIG presiding

Dates of Trial: April 24, 2023 – April 28, 2023

Deputy Clerk: Julie D.

Court Reporter:

Appearances:

TYRAN PINKINS in person and by:	B'Ivory LaMarr, Thomas Napierala & Paul Strouse
JOSHUA DIEDRICH in person and by:	Emery Harlan and Warren Buliox
TODD LAUER in person and by:	Emery Harlan and Warren Buliox

MONDAY, April 24, 2023

8:40 AM Court in session. Case called. Appearances made.

Judge reviews case history. Discusses witnesses to appear and order of appearance.

Judge will provide draft Jury Instructions and draft Special Verdict form by the end of the day. Judge asks if there a stipulation of facts re charges related to case being dropped. Parties will discuss before opening arguments.

Court turns to *voir dire*. 25 jurors have reported; 13 will be seated in the jury box and the remaining jurors will be seated in the gallery. Will pick 7 jurors. If a juror from the box is stricken for cause, a replacement will be called from the gallery. Plaintiff will have 3 strikes and defendant will have 3 strikes.

9:05 AM BREAK (*Jury Profile List provided to the parties.*)

9:10 AM Jury panel brought to courtroom. Court makes introductory remarks; 25 prospective jurors sworn. *Voir dire* commences.

9:43 AM Court sidebars with counsel.

9:44 AM End of sidebar. *Voir dire* continues.

9:50 AM Court sidebars with counsel.

9:52 AM End of sidebar. *Voir dire* continues.

9:54 AM Court sidebars with counsel.

9:55 AM End of sidebar. *Voir dire* continues.

10:05 AM Jurors 3, 4, 5, 6, 7, 9 and 11 are selected to serve.

Court excuses balance of jury pool.

Clerk administers oath to jury.

Court addresses housekeeping matters.

10:28 AM Jury out. Recess.

10:40 AM Court in session and Jury in.

10:43 AM Plaintiff's opening by Mr. LaMarr

10:54 AM Defendant requests sidebar.

10:55 AM End of sidebar. Plaintiff's opening continues.

11:27 AM Defendants' opening by Mr. Buliox.

11:22 AM Defendant finished with opening remarks

12:00 PM Lunch Break
Jury out.

1:06 PM Court in session. Judge discusses note from Juror #6, clarification of motions in limine and testimony re policies and procedures and testimony re plaintiff's action in the hospital.

1:20 PM Juror #6 brought in. Note discussed.

1:34 PM Jury in.

1:35 PM **Plaintiff calls Joshua Diederich**
Witness sworn.
Direct examination by Mr. LaMarr

1:48 PM Mr. Diederich views and discussed Plaintiff's Exhibits 1, 2 & 41.

2:22 PM Defendant requests sidebar.

2:25 PM End of sidebar. Examination of Diederich continues.

2:29 PM Mr. Diederich reviews his deposition pg 170.

2:34 PM Mr. Diederich reviews and discusses Exhibit 16.

2:36 PM Court sidebars with counsel.

2:38 PM Sidebar ends. Examination of Diederich continues.

2:39 PM Mr. Diederich reviews and discusses Exhibit 1051.

2:42 PM Mr. Diederich reviews and discusses Exhibit 15.

2: 50 PM Afternoon Break.
Jury out.

3:10 PM Jury in. Mr. LaMarr continues direct of Mr. Diederich.

3:10 PM Mr. Diederich reviews and discusses Exhibit 14.

3:21 PM Mr. Diederich reviews his deposition pg 310.

3:26 PM Mr. Diederich reviews and discusses Exhibit 41.

3:32 PM Mr. Diederich reviews and discusses Exhibit 14.

3:40 PM Cross Examination by Mr. Buliox.

3:58 PM Mr. Diederich reviews and discusses Exhibit 1.

4:36 PM Court sidebars with counsel.

4:39 PM Mr. Diederich reviews and discusses Exhibit 1008.

4:49 PM Mr. Diederich reviews and discusses Exhibit 1051.

4:58 PM Court instructs jury to return by 8:30 a.m.
Jury out.

5:02 PM Counsel given drafts of Jury Instructions and Special Verdict. Court is adjourned for the day.

TUESDAY, April 25, 2023

8:32 AM Case called. Appearances remain the same. Court addresses housekeeping matters with counsel.

8:42 AM Jury in.
8:44 AM Further testimony of Joshua Diederich by Mr. Buliox.
Witness remains under oath.
8:45 AM Mr. Diederich reviews and discusses Exhibit 14.
8:58 AM Redirect by Mr. LaMarr.
9:06 AM Mr. Diederich reviews and discusses Exhibit 15.
9:14 AM Mr. Diederich reviews and discusses Exhibit 44.
9:26 AM Mr. Diederich reviews his deposition pg 236.
9:26 AM Redirect by Mr. Buliox.
9:28 AM Mr. Diederich reviews and discusses Exhibit 14.
9:30 AM Witness is excused.

9:31 AM **Plaintiff calls Roberta Martin**
Witness sworn.
Direct examination by Mr. Strouse.
9:54 AM Ms. Martin reviews Exhibit 43.
10:00 AM Cross Examination by Mr. Buliox.
10:07 AM Ms. Martin reviews and discussed Exhibit 1019.
10:11 AM Redirect by Mr. Strouse.
10:13 AM Court sidebars with counsel.
10:18 AM Witness is excused.

10:20 AM Morning Break.
Jury out.

10:35 AM Jury In.

10:37 AM **Plaintiff calls Eric Hill**
Witness sworn.
Direct examination by Mr. LaMarr.
10:41 AM Cross Examination by Mr. Harlan.
10:45 AM Court sidebars with counsel.
10:46 AM Mr. Hill reviews and discussed Exhibit 1104.
10:50 AM Court sidebars with counsel.
10:52 AM Redirect by Mr. LaMarr.
10:53 AM Witness is excused.

10:58 AM **Defendant calls Todd Lauer**
Witness sworn.
Direct examination by Mr. Buliox.
11:15 AM Mr. Lauer reviews and discusses pictures of HALO bathroom.
11:24 AM Mr. Lauer reviews and discusses Exhibit 1015.
11:28 AM Mr. Lauer review and discusses pictures of HALO facility.
11:46 AM Cross Examination by Mr. LaMarr.
11:57 AM Jury out. Court breaks for lunch.

1:03 PM Jury in.
Further testimony of Todd Lauer by Mr. LaMarr.
1:11 PM Mr. Lauer reviews deposition, pg. 19.
1:20 PM Mr. Lauer reviews deposition, pg. 61.
1:27 PM Mr. Lauer reviews deposition, pg. 53.
1:29 PM Mr. Lauer reviews deposition, pg. 60.
1:34 PM Court has sidebar with counsel.

1:43 PM Mr. Lauer reviews and discussed Exhibit 3.
 1:57 PM Court has sidebar with counsel.
 2:06 PM Mr. Lauer reviews and discusses Exhibit 3.
 2:10 PM Redirect by Mr. Buliox.
 2:13 PM Mr. Lauer reviews deposition, pg. 27.
 2:20 PM Redirect by Mr. LaMarr.
 2:22 PM Mr. Lauer reviews and discussed Exhibit 15.
 2:29 PM Witness is excused. Afternoon break. Jury out.

 2:47 PM Jury in.

 2:48 PM **Plaintiff calls Tonya M Scarvers**
 Witness sworn.
 Direct examination by Mr. LaMarr
 2:52 PM Cross examination by Mr. Buliox.
 2:54 PM Court sidebars with counsel.
 2:58 PM Witness is excused.

 2:59 PM **Defendant calls Dr. Nicholas Panomitros**
 Witness sworn.
 Direct examination by Mr. Napierala.
 2:59 PM Mr. Panomitros reviews and discussed Exhibit 34.
 3:17 PM Court sidebars with counsel.
 3:27 PM Mr. Panomitros reviews and discussed Exhibit 34A.
 3:50 PM Cross examination by Mr. Harlan.
 4:10 PM Mr. Panomitros reviews and discussed Exhibit 34A.
 4:12 PM Court sidebars with counsel.
 4:35 PM Mr. Panomitros reviews and discussed Exhibit 1125.
 4:39 PM Mr. Panomitros reviews and discussed Exhibit 1096.
 4:45 PM Mr. Panomitros reviews and discussed Exhibit 1100.
 4:51 PM Mr. Panomitros reviews and discussed Exhibit 1085.
 5:00 PM Redierct by Mr. Napierala.
 5:04 PM Witness is excused.
 Court instructs jury to return by 8:30 a.m. Jury out.
 5:05 PM Court addresses housekeeping matters with counsel.
 5:24 PM Court is adjourned for the day.

WEDNESDAY, April 26, 2023

8:41 AM Case called. Appearances remain the same. Court addresses housekeeping matters with counsel.
 8:52 AM Jury in.

 8:54 AM **Plaintiff calls Jacob Mauer**
 Witness sworn.
 Direct examination by Mr. LaMarr
 9: 28 AM Mr. Mauer reviews and discussed Exhibit 15.
 9: 33 AM Mr. Mauer reviews and discussed Exhibit 3.
 9: 36 AM Cross examination by Mr. Buliox.
 10:01 AM Mr. Mauer reviews and discussed Exhibit 1018.
 10:15 AM Court sidebars with counsel.
 10:17 AM Mr. Mauer reviews and discussed Exhibit 1017.
 10:22 AM Mr. Mauer reviews and discussed Exhibit 3.
 10:23 AM Mr. Mauer reviews and discussed Exhibit 4.

10:26 AM Morning Break. Jury out.
 10:44 AM Jury in. Redirect by Mr. LaMarr.
 11:01 AM Mr. Mauer reviews and discussed Exhibit 3.
 11:09 AM Redirect by Mr. Buliox.
 11:11 AM Witness is excused.

 11:12 AM **Plaintiff calls Marvin Bohanon**
 Witness sworn.
 Direct examination by Mr. Strouse.
 11:27 AM Cross examination by Mr. Harlan.
 11:31 AM Court sidebars with counsel.
 11:40 AM Mr. Bohanon reviews and discussed Exhibit 1129.
 11:41 AM Mr. Bohanon reviews and discussed Exhibit 1130.
 11:47 AM Redirect by Mr. Strouse.
 11:48 AM Witness is excused.

 11:50 AM Jury out. Court breaks for lunch.
 1:02 PM Court is in session. Judge rules on motion re Exhibit 6. Exhibit 6 is not admitted.
 1:18 PM Jury In

 1:20 PM **Plaintiff calls Tyran Pinkins**
 Witness sworn.
 Direct examination by Mr. LaMarr.

 1:57 PM Afternoon break. Jury out.
 2:24 PM Court in session.
 2:25 PM Jury In. Direct examination by Mr. LaMarr continues.

 2:30 PM Mr. Pinkins reviews and discussed Exhibit 8.
 2:36 PM Court has sidebar with counsel.
 2:43 PM Mr. Pinkins reviews and discussed Exhibit 7.
 2:52 PM Mr. Pinkins reviews and discussed Joint Exhibit 1, Ascension Medication record, pg. 39
 2:55 PM Mr. Pinkins reviews and discussed Joint Exhibit 1, Ascension Medication record, pg. 393
 2:59 PM Mr. Pinkins reviews and discussed Exhibit 33.
 3:07 PM Mr. Pinkins reviews and discussed Exhibit 21.
 3:12 PM Court sidebars with counsel.

 3:46 PM Second afternoon break. Jury out.
 3:58 PM Court in session. Jury in.
 4:00 PM Cross examination by Mr. Harlan.
 4:06 PM Mr. Pinkins reviews and discussed Exhibit 1109.
 4:09 PM Mr. Pinkins reviews and discussed Exhibit 1075.
 4:14 PM Mr. Pinkins reviews and discussed Exhibit 1113.
 4:20 PM Mr. Pinkins reviews and discussed Exhibit 1086.
 4:26 PM Mr. Pinkins reviews and discussed Exhibit 1087.
 4:32 PM Court sidebars with counsel.
 4:46 PM Mr. Pinkins reviews and discussed Exhibit 1120.
 4:48 PM Mr. Pinkins reviews and discussed Exhibit 1084.
 4:50 PM Court has sidebar with counsel.
 4:54 PM Mr. Pinkins reviews and discussed Exhibit 1076.
 5:01 PM Court instructs jury to return by 8:30 a.m. Jury out.

5:02 PM Court takes a 10 minute break.
5:12 PM Court back in session. Review of draft jury instructions and special verdict. Discuss list of witnesses for tomorrow.
6:12 PM Court is adjourned for the day.

THURSDAY, April 27, 2023

8:37 AM Case called. Appearances remain the same. Court addresses housekeeping matters with counsel.
8:40 AM Jury in.

8:44 AM Further testimony of Tyran Pinkins by Mr. Harlan.
Witness remains under oath.
8:46 AM Mr. Pinkins reviews and discusses Exhibit 1095.
8:57 AM Mr. Pinkins reviews and discusses Exhibit 1084.
9:01 AM Court sidebars with counsel.
9:19 AM Mr. Pinkins reviews and discusses Exhibit 1080.
9:23 AM Mr. Pinkins reviews and discusses Exhibit 1108.
9:26 AM Mr. Pinkins reviews and discusses his deposition, pg. 87.
9:30 AM Court sidebars with counsel.
9:35 AM Mr. Pinkins reviews and discusses Exhibit 1001.
9:38 AM Mr. Pinkins reviews and discusses Exhibit 1082.
9:44 AM Mr. Pinkins reviews and discusses Exhibit 1088.
9:47 AM Mr. Pinkins reviews and discusses Exhibit 1124.
9:50 AM Mr. Pinkins reviews and discusses his deposition.
9:55 AM Mr. Pinkins reviews and discusses Exhibit 1092.
10:01 AM Mr. Pinkins reviews and discusses Exhibit 1104.
10:05 AM Mr. Pinkins reviews and discusses his deposition, pg. 317.
10:13 AM Mr. Pinkins reviews and discusses Exhibit 1106.
10:19 AM Mr. Pinkins reviews and discusses Exhibit 1127.
10:22 AM Mr. Pinkins reviews and discusses Exhibit 1100.

10:25 AM Morning break. Jury out.
10:37 AM Court in session. Jury in.

10:40 AM Redirect by Mr. LaMarr.
10:55 AM Mr. Pinkins reviews and discusses joint exhibit 1.
11:13 AM Recross by Mr. Harlan.
11:19 AM Witness is excused. The plaintiff rests. The court sidebars with counsel.

11:22 AM **Defendant calls Warren Torchinsky**
Witness sworn.
Direct examination by Mr. Harlan.
11:40 AM Mr. Torchinsky reviews and discusses Exhibit 1036.
11:41 AM Cross examination by Mr. Napierala.
12:03 PM Redirect by Mr. Harlan.
12:12 PM Recross by Mr. Napierala.
12:14 PM Witness is excused. Jury out.

12:17 PM Court breaks for lunch.
1:22 PM Court is in session. Argument on oral Rule 50a and punitive damages motion. Both are taken under advisement.
1:38 PM Jury In

1:29 PM **Defendant calls Jon Blum**
Witness sworn.
Direct examination by Mr. Harlan.
1:44 PM Mr. Blum reviews and discusses Exhibit 1032.
1:56 PM Cross examination by Mr. LaMarr.
2:01 PM Mr. Blum reviews and discusses Exhibit 38.
2:21 PM Mr. Blum reviews and discusses Exhibit 15.
2:34 PM Redirect by Mr. Harlan.
2:36 PM Mr. Blum reviews and discusses Exhibit 1054.
2:42 PM Witness is excused.

2:44 PM Afternoon break. Jury out.
2:52 PM Jury in.

2:54 PM **Defendant calls Michael Shapiro**
Witness sworn.
Direct examination by Mr. Buliox.
2:58 PM Mr. Shapiro reviews and discusses Exhibit 1034.
3:06 PM Mr. Shapiro reviews and discusses Exhibit 1031.
3:09 PM Mr. Shapiro reviews and discusses Exhibit 1034.
3:23 PM Mr. Shapiro reviews and discusses Exhibit 1029.
3:24 PM Mr. Shapiro reviews and discusses Exhibit 1100.
3:28 PM Cross examination by Mr. Napierala.
3:32 PM Mr. Shapiro reviews and discusses Exhibit 35.
3:41 PM Redirect by Mr. Buliox.
3:43 PM Mr. Shapiro reviews and discusses Exhibit 1037.
3:46 PM Recross by Mr. Napierala.
3:48 PM Witness is excused.

3:50 PM **Defendant calls Sandra Haarsma**
Witness sworn.
Direct examination by Mr. Harlan.
3:56 PM Cross examination by Mr. LaMarr.
4:02 PM Redirect by Mr. Harlan.
4:03 PM Recross by Mr. LaMarr.
4:04 PM Witness is excused.

4:06 PM **Defendant calls Austin Schwartz**
Witness sworn.
Direct examination by Mr. Harlan.
4:27 PM Cross examination by Mr. LaMarr.
4:30 PM Witness is excused.

4:30 PM Court has sidebar with counsel.

4:35 PM **Defendant calls Joshua Baclawski**
Witness sworn.
Direct examination by Mr. Harlan.
4:38 PM Mr. Baclawski reviews and discusses Exhibit 1003.
4:46 PM Mr. Baclawski reviews and discusses Exhibit 1004.
4:48 PM Cross examination by Mr. LaMarr.
4:50 PM Mr. Baclawski reviews and discusses Exhibit 7.

4:58 PM Mr. Baclawski reviews and discusses Exhibit 11, 12 & 13.
5:01 PM Witness is excused.

5:02 PM Court has sidebar with counsel.

5:03 PM **Defendant recalls Todd Lauer**
Witness remains sworn.
Direct examination by Mr. Biloux.
5:05 PM Recross examination by Mr. LaMarr.

5:07 PM All parties rest. Close of evidence.
Jury out.

5:10 PM Court discusses mitigation instruction filed by defendant. Instructions re closing arguments.

5:15 PM Court is adjourned for the day.

FRIDAY, April 28, 2023

8:48 AM Case called. Appearances remain the same. Court addresses housekeeping matters with counsel and rules on outstanding motions.
9:04 AM Court breaks before jury enters.
9:09 AM Court resumes.
9:19 AM Jury in.
Jury instructions given by the Court.
9:46 AM Closing argument by Plaintiff.
10:19 AM Closing argument by Defendant.
11:04 AM Court sidebars with counsel.
11:05 AM Redirect closing by Plaintiff.
11:17 AM End of closing remarks.
CSO sworn. Jury exits to deliberate.
11:19 AM Plaintiff makes verbal motion for mistrial.
11:22 AM Court in recess.

1:00 PM Note from jury to court.
1:19 PM Court in session. Addresses jury question with counsel.
1:33 PM Court sends back written response.
1:34 PM Jury deliberation continues.
3:00 PM Jury notifies CSO of verdict.
3:11 PM Court back in session. All Parties present.
3:13 PM Jury in.
3:15 PM Verdict read on the record. Court polled jury.
3:18 PM Jury excused from trial. Judge rules against plaintiff's verbal motion for mistrial.
3:23 PM Court in recess.